



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-072

October 4, 2016

The Honorable James Ratliff
State Representative
P. O. Box 791
Imboden, AR 72434-0791

Dear Representative Ratliff:

This is in response to your request for an opinion on the following questions:

1. May the quorum court appropriate a bonus or lump-sum payment to employees of the county?
2. May the quorum court appropriate a bonus or lump-sum payment to county officials of the county?
3. May the quorum court appropriate a bonus or lump-sum payment to employees of the county based on longevity?
4. May the quorum court appropriate a bonus or lump-sum payment to county officials of the county based on longevity?
5. May the quorum court appropriate themselves a bonus or lump-sum payment?
6. Would an appropriation of a bonus or lump-sum payment by a quorum court for the justices of the peace violate Amendment 55? Ark. Code Ann. § 14-14-1205?
7. If the answer to question #4 above is in the affirmative, wouldn't an ordinance adopting a policy and/or appropriation ordinance to provide for longevity pay for county officials need to take into

account Ark. Code Ann. § 14-14-1203(d), which limits the timing for reduction of a county officials' salary? Would it be advisable for an ordinance adopting a policy and/or appropriation ordinance to provide for longevity pay for county officials to take into account Ark. Code Ann. § 14-14-1203(d)?

RESPONSE

In my opinion, the answer to each of your first four questions is “yes” and the answer to your fifth question is “no.” It is my opinion in response to your fifth and sixth questions that the appropriation of a bonus or lump-sum payment for justices of the peace in addition to the authorized per diem would be contrary to Ark. Code Ann. § 14-14-1205. The answer to each part of your seventh question is “yes,” in my opinion.

DISCUSSION

I will group your questions together by subject matter because the applicable analysis and conclusions to the questions, as grouped below, are essentially the same.

Question 1: May the quorum court appropriate a bonus or lump-sum payment to employees of the county?

Question 3: May the quorum court appropriate a bonus or lump-sum payment to employees of the county based on longevity?

State law vests quorum courts with broad authority to determine the compensation of county employees. This authority is found in at least four provisions. First, Amendment 55 to the Arkansas Constitution states that “the Quorum Court shall have the power to ... fix the number and compensation of deputies and county employees[.]”¹

The quorum court’s authority concerning county employee compensation is also reflected in the statutory enumeration of county powers, as follows:

¹ Ark. Const. amend. 55, § 4.

As provided by Arkansas Constitution, Amendment 55, Section 1, Part (a), a county government, acting through its county quorum court, may exercise local legislative authority not expressly prohibited by the Arkansas Constitution or by law for the affairs of the county.

These powers include, but are not limited to, the power to:

* * *

Fix the number and compensation of deputies and county employees[.]²

Another provision of the county government code similarly states:

COMPENSATION. The quorum court of each county shall fix by ordinance the number and compensation of all county employees, *including a bonus or lump-sum payment.*³

Finally, the county government code states:

Appropriation Required. All compensation, including salary, hourly compensation, expense allowances, training expenses, and other remunerations, allowed to any county officer, district officer, county officer-elect, district officer-elect, or employee is made only on specific appropriation by the quorum court of the county.⁴

These four citations make clear that the quorum court is the entity authorized to establish the compensation of county employees. The last citation—Ark. Code Ann. § 14-14-1203(a)—also reflects the General Assembly’s expansive view of the term “compensation.”

² Ark. Code Ann. § 14-14-801(a), (b)(6) (Repl. 2013).

³ Ark. Code Ann. § 14-14-1206(a) (Repl. 2013) (emphasis added).

⁴ Ark. Code Ann. § 14-14-1203(a) (Supp. 2015).

With regard, moreover, to “a bonus or lump-sum payment,” the above-emphasized Ark. Code Ann. § 14-14-1206(a) plainly shows that these particular payments are permissible “compensation.” The answer to your first question is therefore clearly “yes.” The quorum court may appropriate a bonus or lump-sum payment to county employees.

It is my further opinion, in response to your third question, that the appropriation of a bonus or lump-sum payment to county employees based on longevity (i.e., the number of years of service) would be permissible. I believe this conclusion follows from the expansive view of “compensation” reflected by Ark. Code Ann. § 14-14-1203(a), coupled with the absence of any prohibition in either the constitution or statutes against longevity pay for county employees.⁵

Question 2: May the quorum court appropriate a bonus or lump-sum payment to county officials of the county?

Question 4: May the quorum court appropriate a bonus or lump-sum payment to county officials of the county based on longevity?

Under Amendment 55, “[c]ompensation of each county officer” is to be “fixed by the Quorum Court within a minimum and maximum to be determined by law.”⁶ That is, the General Assembly is to establish a range within which county officers’ compensation must fall; and the quorum court will set the county officers’ compensation within that range.

This compensation scheme with respect to county officers is further reflected in the county government code:

As provided by Arkansas Constitution Amendment 55, 1, Part (a), a county government, acting through its county quorum court, may exercise local legislative authority not expressly prohibited by the Arkansas Constitution or by law for the affairs of the county.

⁵ It should be emphasized that the payment of a bonus or lump sum as part of a county employee’s compensation must be authorized by specific appropriation. *Id.* Specific appropriations may be enacted through the adoption of an annual budget. Ark. Code Ann. § 14-14-907(a)(3)(B) (Repl. 2013).

⁶ Ark. Const. amend. 55, § 5.

These powers include, but are not limited to, the power to:

* * *

Fix the compensation of each county officer within a minimum and maximum to be determined by law[.]⁷

The “minimums and maximums” for county officers are found in Ark. Code Ann. § 14-14-1204. This statute establishes “minimum and maximum salaries per annum.”⁸ It provides that the quorum court “shall fix by ordinance the annual salaries of the following county officers” within the stated ranges,⁹ and it further specifies that the annual salary shall be compensation for all services performed.¹⁰

It is thus clear that an elected county officer cannot receive compensation above the maximum annual salary applicable to his position. In my opinion, the “annual salary” might include a bonus or lump-sum payment, including such a payment based on longevity. There is no general proscription against additional compensation for elected county officials, such as that pertaining to members of the quorum court (discussed below). But I believe the payment would need to be part of the fixed “annual salary,” that is, the salary that is fixed by ordinance pursuant to section 14-14-1204. As noted above, the officer’s fixed salary is in compensation for all services. This indicates that the fixed salary must include all compensation. And of course, as also noted above, the annual maximum cannot be exceeded.

⁷ Ark. Code Ann. § 14-14-801(a), (b)(7).

⁸ *E.g.*, Ark. Code Ann. § 14-14-1204(c)(2) (Repl. 2013) (regarding the “minimum and maximum salaries per annum of the county judge....”).

⁹ *Id.* at § 14-14-1204(a). The officers covered are the county judge, sheriff and ex officio collector of taxes, circuit clerk, county clerk (where established), assessor, coroner, and surveyor). *Id.*

¹⁰ *E.g.*, § 14-14-1204(c)(1) (“The annual salary of a county judge shall be in compensation for his or her services as the executive and administrator for the county, as judge of the county court, as judge of the court of common pleas, where established, as presiding officer of the quorum court, and for all other services performed as provided by the Arkansas Constitution, by law, or by county ordinance.”).

Question 5: May the quorum court appropriate themselves a bonus or lump-sum payment?

Question 6: Would an appropriation of a bonus or lump-sum payment by a quorum court for the justices of the peace violate Amendment 55? Ark. Code Ann. § 14-14-1205?

Arkansas Code Annotated § 14-14-1205 specifically limits compensation and expenses to be provided quorum court members to that provided by subchapter 12 of chapter 14 of Arkansas Code title 14:

A justice of the peace shall not receive compensation as a county employee or deputy, nor shall any justice receive compensation or expenses from funds appropriated by the quorum court for any services performed within the county, *other than as provided by this subchapter.*¹¹

Subchapter 12 authorizes “per diem compensation” for members of the quorum court.¹² This compensation is defined as “a per calendar day allowance, exclusive of allowable expenses, which shall be paid to a justice for attending meetings of the county quorum court.”¹³ Subchapter 12 also authorizes health insurance coverage for quorum court members.¹⁴

The authorization of health insurance benefits was enacted by the General Assembly in the wake of the Arkansas Supreme Court’s invalidation of a county

¹¹ Ark. Code Ann. § 14-14-1205(c) (Repl. 2013) (emphasis added).

¹² Ark. Code Ann. § 14-14-1205(a). This is consistent with Amendment 55, which states that “[p]er diem compensation for members of the Quorum Court shall be fixed by law.” Ark. Const. amend. 55, § 5.

¹³ *Id.* at § 14-14-1205(a)(2)(A). The per diem is currently fixed at not less than \$125 for each regular meeting, with the amount not to exceed a certain stated amount per calendar year, depending upon the population of the county. *Id.* at § 14-14-1205(a)(1).

¹⁴ *Id.* at § 14-14-1205(a)(3) (authorizing counties to “provide medical insurance coverage for members of the quorum court.”).

ordinance that provided such benefits for quorum court members.¹⁵ Citing section 14-14-1205, the Court held that the ordinance “and ones like it” are contrary to the state law restriction on quorum court members’ compensation and expenses.¹⁶

There is no provision in subchapter 12 allowing or providing for the payment of a bonus or lump-sum amount to quorum members in addition to the per diem compensation authorized by section 14-14-1205. I must therefore conclude, in light of the above statutory limitation and case law, that the appropriation of such a payment in addition to the authorized per diem is prohibited.

Question 7: If the answer to question #4 above is in the affirmative, wouldn't an ordinance adopting a policy and/or appropriation ordinance to provide for longevity pay for county officials need to take into account Ark. Code Ann. § 14-14-1203(d), which limits the timing for reduction of a county officials' salary? Would it be advisable for an ordinance adopting a policy and/or appropriation ordinance to provide for longevity pay for county officials to take into account Ark. Code Ann. § 14-14-1203(d)?

Amendment 55 states that county officers’ compensation “may not be decreased during a current term[.]”¹⁷ Arkansas Code Annotated § 14-14-1203 similarly provides in relevant part that “[a]ny decrease in the annual salary or compensation of a county officer shall not become effective until January 1 following a general election held after the decrease has been fixed by the quorum court of the county.”¹⁸

The answer to each part of the above question is therefore “yes.” Consideration would need to be given to the timing of the inclusion of a longevity payment in a county officer’s salary, in light of this prohibition against decreasing a county officer’s salary or compensation during a current term. For example, inclusion of the longevity payment in the salary of an incoming office-holder would presumably be a salary decrease if the current salary included a longevity payment

¹⁵ *Massongill v. County of Scott*, 329 Ark. 98, 947 S.W.2d 749 (1997).

¹⁶ 329 Ark. at 107, 947 S.W.2d at 753.

¹⁷ Ark. Const. amend. 55, § 5.

¹⁸ Ark. Code Ann. § 14-14-1203(d).

for a previous office holder with a longer period of service. The new longevity payment could not be effective in that case until after the next general election.

Sincerely,

A handwritten signature in blue ink, appearing to read 'LR', is positioned above the typed name.

LESLIE RUTLEDGE
Attorney General